

REMARKS

The Office Action mailed February 16, 2004, has been received and reviewed. Claims 1, 2, 4-16, 22, and 25 are currently pending in the application. Claims 2, 5, and 7 are acknowledged by the Office to be in condition for allowance. Allowability of claims 1, 4, 6, and 8-11 has been withdrawn in view of the double patenting rejections. Applicants have amended claims 22 and 25. All amendments are made without prejudice or disclaimer. Reconsideration is respectfully requested.

Priority

The Examiner asserts that the priority claim is inappropriate because USSN 08/482,161 cannot be a CIP of USSN 08/454,121 because the '121 application was filed five months after '161. Applicants have amended the specification to show that USSN 08/454,121 is a national stage application under 35 U.S.C. § 371, of international application PCT/NL94/00168, with an international filing date of July 19, 1994. The MPEP, 1895.01 (I.)(A.), sets forth that, by virtue of 35 U.S.C 363, the U.S. filing date of a national stage application is the international filing date. *The date which appears in the "filing date" box on the front of the file wrapper of a national stage application is the date on which the requirements of 35 U.S.C. § 371 were complied with, and is not the same as the international filing date of the application.* For USSN 08/454,121, the "filing date" box indicates November 30, 1995 as the filing date. However, this is not the same as the international filing date, which is July 19, 1994.

Because the U.S. filing date of USSN 08/454,121, as a national stage application under § 371, is July 19, 1994, the '121 application was filed almost a year before the '161 application. As such, a priority claim by '161 to '121 is appropriate. Applicants respectfully request this objection be removed.

Specification

Applicants have amended the specification at page 19, lines 2-16, according to the Examiner's recommendations. Specifically, references to the SEQ ID NOs: on page 19, lines 5, 7, and 14 were added. Applicants request reconsideration and withdrawal of the rejection.

Claim Rejections under 35 USC § 112

The Examiner rejected claims 22 and 25 under 35 U.S.C. § 112, first paragraph, as allegedly lacking enablement. Applicants have amended claims 22 and 25 to recite “wherein said nucleic acid molecule encoding a chicken anemia virus protein VP3 (or VP2) is operatively linked to a promoter.” The amendments to claims 22 and 25 incorporate the language that was acknowledged by the Examiner, on page 3, line 15 of the Office Action, as being enabling. Therefore, claims 22 and 25 should be enabled by the specification. As such applicants respectfully request that the rejection of claims 22 and 25 be withdrawn.

Double Patenting

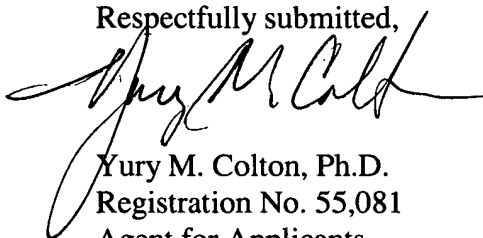
The allowability of claims 1, 4, 6, 8-13, and 14-16 was withdrawn due to the rejection under the judicially created doctrine of obviousness-type double patenting. In order to expedite prosecution of the present application, a terminal disclaimer, in compliance with 31 CFR § 1.321 (b) and (c), is submitted herein to overcome the double patenting rejections in view of U.S. Pat. 5,952,002. The filing of the terminal disclaimer should not be construed as acquiescence of the double patenting or obviousness-type double patenting rejection.

Enclosed are the terminal disclaimer and the required fee. Reconsideration and withdrawal of the rejection is respectfully requested.

CONCLUSION

As acknowledged by the Examiner, claims 2, 5, and 7 are currently in condition for allowance. Additionally, in light of the terminal disclaimer, claims 1, 4, 6, 8-13, and 14-16 should be allowable, and in view of the amendments, claims 22 and 25 should be allowable. Therefore, the application should be in condition for allowance. If questions remain after consideration of the foregoing, the Office is kindly requested to contact applicants' agent at the address or telephone number given herein.

Respectfully submitted,



Yury M. Colton, Ph.D.
Registration No. 55,081
Agent for Applicants
TRASKBRITT, P.C.
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

Date: August 16, 2004

YMC/bv

Enclosure: Terminal Disclaimer and requisite fee
Petition for 3 month extension and requisite fee